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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

IN RE COLLEGE ATHLETE NIL
LITIGATION

Case No. 4:20-cv-03919-CW

**STIPULATION AND [PROPOSED]
ORDER SUPPLEMENTING RECORD**

Judge: Hon. Claudia Wilken

1 Pursuant to this Court's April 7, 2023 Order Granting Stipulation and Setting Case
2 Schedule (ECF No. 243), all Defendants submitted their Class Certification Opposition,
3 Supporting Expert Reports, and *Daubert* Motion (the "Class Opposition Submittals") on April 28,
4 2023. On May 1, 2023, Defendants first obtained a sworn Declaration from a non-party witness,
5 Jimmy Sexton. Defendants furnished the Sexton Declaration to Plaintiffs, and Plaintiffs (with
6 reservation of rights, as noted below) have consented to Defendants' submission of the Sexton
7 Declaration to supplement the record supporting the Class Opposition Submittals. Defendants
8 represent to the Court that, despite diligent efforts, and as a result of circumstances outside their
9 control, they were unable to obtain Mr. Sexton's sworn Declaration prior to May 1, 2023.

10 Accordingly, all parties submit the following Stipulation:

11 WHEREAS, the Sexton Declaration is attached hereto as Exhibit A;

12 WHEREAS, Defendants assert that the Sexton Declaration supports the arguments set forth
13 at pages 8:13–9:3; 12:18–20; 24:5; 24:24–25:6, and 30:25–31:15 of Defendants' Joint Opposition
14 to Plaintiffs' Motion for Class Certification [ECF No. 252]; and

15 WHEREAS, while consenting to the submission of the Sexton Declaration as a supplement
16 to the record, Plaintiffs reserve all rights and arguments in opposition to the Class Opposition
17 Submittals and the Sexton Declaration;

18 THEREFORE, THE PARTIES, THROUGH THEIR RESPECTIVE COUNSEL OF
19 RECORD, HEREBY STIPULATE, SUBJECT TO COURT APPROVAL, THAT:

20 The Court issue an order receiving the Sexton Declaration tendered by Defendants in
21 support of their Class Opposition Submittals as an addition to the record in this action.

1 Dated: May 4, 2023

Respectfully Submitted,

2 **WILKINSON STEKLOFF LLP**

3 **COOLEY LLP**

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ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1(i)(3)

Pursuant to Civil Local Rule 5-1(h)(3), the filer of this document attests that concurrence in the filing of this document has been obtained from the signatories above.

/s/ Rakesh Kilaru
Rakesh Kilaru

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[PROPOSED] ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

THE HONORABLE CLAUDIA WILKEN
United States District Court Judge

Exhibit A

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12
13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 OAKLAND DIVISION

16
17 In re College-Athlete NIL Litigation

Case No. 4:20-cv-03919-CW

18 DECLARATION OF JAMES E.
19 "JIMMY" SEXTON, II
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1 1. I am a sports agent, representing players and coaches in contract negotiations. I am
2 the Co-Head of the Football division and Head of the Coaching division at CAA Sports, a
3 division of the Creative Artists Agency. I make this declaration of my own personal knowledge
4 and, if called on to do so, could testify competently to the facts stated herein under oath.

5 2. Creative Artists Agency describes its business on LinkedIn as follows:

6 Creative Artists Agency (CAA) is the leading entertainment and sports agency,
7 with global expertise in film and live entertainment, digital media, publishing, sponsorship
8 sales and endorsements, media finance, consumer investing, fashion, trademark licensing,
9 and philanthropy. Distinguished by its culture of collaboration and exceptional client
10 service, CAA's diverse workforce identifies, innovates, and amplifies opportunities for the
11 people and organizations that shape culture and inspire the world. The trailblazer of the
12 agency business, CAA was the first to build a sports business, create an investment bank,
13 launch a venture fund, found technology start-up companies, establish a philanthropic
14 arm, build a business in China, and form a brand marketing services division, among other
innovations. Named Most Valuable Sports Agency by Forbes for eight consecutive years,
CAA represents more than 2,000 of the world's top athletes in football, baseball,
basketball, hockey, soccer, in addition to coaches, on-air broadcasters, and sports
personalities and works in the areas of broadcast rights, corporate marketing initiatives,
social impact, and sports properties for sales and sponsorship opportunities. Founded in
1975, CAA is headquartered in Los Angeles, and has offices in New York, Nashville,
Memphis, Chicago, Miami, London, Munich, Geneva, Stockholm, Shanghai, and Beijing,
among other locations globally. For more information, please visit www.caa.com.

15 CAA Sports manages contracts with a combined value of over \$8.46 billion. Forbes has
16 repeatedly ranked CAA Sports as the #1 sports agency.

17 3. I graduated from the University of Tennessee in 1986 and was licensed as an NFL
18 Players Association ("NFLPA") certified contract advisor ("agent") in 1987. I was one of the
19 youngest agents ever to be licensed by the NFLPA. My first client as an agent was Reggie White,
20 who at one point in time became the NFL's highest paid defensive player and was ultimately
21 elected to the Hall of Fame.

22 4. In my career as an agent, I have represented a significant number of NFL and
23 NBA star players, including Scottie Pippen (played college basketball at Central Arkansas; 17
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1 year NBA career; starting small forward on the Chicago Bulls team who won the NBA
2 championship six times; Olympic gold medal winner), Isaac Bruce (played college football at
3 Memphis State University; 16 year career as NFL wide receiver; Super Bowl Champion; Pro
4 Football Hall of Fame), Sam Darnold (played college football at the University of Southern
5 California; currently quarterback of the San Francisco 49ers), Julio Jones (played college football
6 at the University of Alabama; started his NFL career in 2011 with the Atlanta Falcons; as a wide
7 receiver with the Tampa Bay Buccaneers won a Super Bowl), Derrick Henry (played college
8 football at the University of Alabama; running back since 2016 with the Tennessee Titans; 2020
9 NFL Offensive Player of the Year), and Josh Allen (played collegiately at the University of
10 Wyoming; starting quarterback for the Buffalo Bills; first player in the history of the National
11 Football League to have three seasons with at least 25 passing touchdowns and 5 rushing
12 touchdowns). I also represent a large number of NFL and college coaches. In addition, CAA
13 Sports' marketing agents who report to me represent college players in the name, image, and
14 likeness ("NIL") marketplace.

15 5. For each of my clients who is (or becomes) an NFL player, I negotiate the
16 compensation terms in their employment contracts. As a result, I am intimately familiar with the
17 standard NFL Player Contract and have deep knowledge and experience about the factors that are
18 important in determining the compensation that will be paid to an NFL player by the NFL team
19 (referred to in the contract as a "Club") employing the player.

20 6. Negotiation of the Player Contract for any individual player focuses on: (a)
21 amount of compensation (salary), (b) the term and termination/opt-out provisions of the contract,
22 and (c) the amount of any bonus(es) or incentive payments to be made by the Club to the player.
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1 7. Included amongst the factors and considerations that Clubs take into account, and
2 that are important in the negotiation of the Player Contract, are: (a) past performance and playing
3 ability and projected future performance and playing ability of the player on the field of play; (b)
4 expected career longevity of the player; (c) physical fitness of the player and history of injuries;
5 (d) whether the player will “fit” in the locker room and relate well and in a positive manner to
6 other players on the team, and to coaches; (e) compensation/salary of other players who play the
7 same position on the field, and who are of comparative talent and ability; (f) the needs of the Club
8 (a Club that needs a quarterback may offer much more favorable terms than a Club with an
9 established and talented quarterback, for example); (g) the player’s attitude, personal
10 characteristics, and any off-field positive (e.g., public service) or negative (e.g., criminal history)
11 conduct that may reflect on the Club; and (h) the factors addressed in the next paragraph.

12 8. Parameters and restrictions established by the terms of the NFLPA Collective
13 Bargaining Agreement come into play when negotiating the terms of the Player Contract. For
14 example, the Collective Bargaining Agreement establishes a minimum salary, specifies the
15 permissible size of the roster for each Club, and sets a limit on the total amount of compensation
16 that can be provided to all players at a single Club (but for most players does not set an upper
17 limit on an individual player’s compensation). There are specified NFL Club compensation
18 ranges for NFL players who fall into various categories (new players, certain free agents, etc.)
19 Even with these restrictions and provisions, the compensation paid to players by Clubs varies
20 widely. In the fall of 2022, the NFL minimum salary, pursuant to the Collective Bargaining
21 Agreement, for any player on a Club’s active or inactive list was \$705,000, and the highest NFL
22 player salary exceeded \$50 million. (Some NFL players are paid the minimum salary.)
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1 9. The Player Contract includes provisions that authorize the Club and the NFL to
2 use the player's name, image and likeness for certain specified and limited promotional purposes
3 and confirming the player and the NFLPA will not contest the exclusive rights of the NFL and its
4 Clubs to broadcast NFL games. In my years of experience as a sports agent, however, I have
5 never known these provisions to have any material impact on or to have been a factor or
6 negotiating point with respect to the compensation, bonuses, or term of the player's contract.
7 Clubs and a player's agent focus on the factors and considerations summarized in paragraphs 7
8 and 8 when negotiating compensation, bonuses, and the term of the player's contract.


9 10. I understand that plaintiffs in this action have suggested that if a portion of
10 broadcast revenues were shared with student-athletes, each conference would share the same
11 percentage of its broadcast revenues, so that student-athletes in a conference with higher
12 broadcast revenues would receive larger payments (in absolute dollar terms) than student-athletes
13 in conferences with lower broadcast revenues. I also understand that the plaintiffs in this action
14 have suggested that each scholarship student-athlete on a team would be paid the same amount
15 (i.e., all football players on a team with an athletics scholarship would be paid the same amount,
16 whether the player is a strong contributor or a star, or a bench-warmer). From the perspective of
17 an agent who represents professional athletes, in my opinion, if broadcast revenues were shared
18 with student-athletes, the market would not develop as plaintiffs suggest for the reasons outlined
19 below.

20 11. If broadcast revenue sharing is permitted in college athletics, agents representing
21 star football and basketball players would not advise their player clients to accept the same
22 payment as a player of less talent, ability, and value on the field of play – and star football and
23 basketball players would almost certainly refuse to enter into such a payment structure. I would
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1 anticipate a significant amount of litigation ensuing from star players who would not want to
2 participate in such a revenue sharing process.

3 I declare under penalty of perjury of the laws of the United States of America that the
4 foregoing is true and correct.

5 Executed on April 30th, 2023.

6 
7 James E. "Jimmy" Sexton, II